



POLICE DEPARTMENT

May 19, 2009

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Eric Fawcett
Tax Registry No. 897432
25 Precinct
Disciplinary Case No. 83163/07

Police Officer Ronald Fields
Tax Registry No. 906227
25 Precinct
Disciplinary Case No. 83164/07

The above-named members of the Department appeared before me on January 28, 2009,
charged with the following:

Disciplinary Case No. 83163/07

1. Said Police Officer Eric Fawcett, assigned to the 25th Precinct, on or about June 13, 2006, while on-duty, within the 25th Precinct, having been directed by New York City Police Sergeant Hynes to go to the Manhattan Criminal Court, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS,
GENERAL REGULATIONS

2. Said Police Officer Eric Fawcett, assigned to the 25th Precinct, on or about June 13, 2006, while on-duty, within the 25th Precinct, having been directed by New York City Police Sergeant Sanchez to go to the Manhattan Criminal Court, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS,
GENERAL REGULATIONS

3. Said Police Officer Eric Fawcett, assigned to the 25th Precinct, on or about June 13, 2006, while on-duty, within the 25th Precinct, having been directed by New York City Police

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Sergeant Hynes to get Police Officer Fields and for both of them to report to Sergeant Douglas MacLean, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLAINT WITH ORDERS,
GENERAL REGULATIONS

4. Said Police Officer Eric Fawcett, assigned to the 25th Precinct, on or about June 13, 2006, while on-duty, within the 25th Precinct, did wrongfully cause false entries to be made in Department records, to wit: said Officer wrongly indicated, or wrongfully caused to be indicated, on the roll call log that his end of tour as 1050 hours when, in fact, he left work at 1040 hours.

P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY – GENERAL,
GENERAL REGULATIONS

5. Said Police Officer Eric Fawcett, assigned to the 25th Precinct, on or about June 13, 2006, while on-duty, within the 25th Precinct, after having been notified by New York City Police Officer Feliciano to go to the Manhattan Criminal Court, did fail and neglect to comply with said notification.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS
P.G. 203-05, Page 1, Paragraph 1 – PERFORMANCE ON DUTY

Disciplinary Case No. 83164/07

1. Said Police Officer Ronald Fields, assigned to the 25th Precinct, on or about June 13, 2006, while on-duty, within the 25th Precinct, having been directed by New York City Police Sergeant James Hynes to go to the Manhattan Criminal Court, did fail and neglect to comply with said order, stating, "I'm not going."

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS,
GENERAL REGULATIONS

2. Said Police Officer Ronald Fields, assigned to the 25th Precinct, on or about June 13, 2006, while on-duty, within the 25th Precinct, having been directed by New York City Police Sergeant Sanchez to go to the Manhattan Criminal Court, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS,
GENERAL REGULATIONS

3. Said Police Officer Ronald Fields, assigned to the 25th Precinct, on or about June 13, 2006, while on-duty, within the 25th Precinct, was discourteous to New York City Police Sergeant Douglas MacLean, in that said Officer ignored Sergeant MacLean's several attempts to stop and talk to said Officer as said Officer was leaving the precinct.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERALS,
GENERAL REGULATIONS

4. Said Police Officer Ronald Fields, assigned to the 25th Precinct, on or about June 13, 2006, while on-duty, within the 25th Precinct, did wrongfully cause false entries to be made in Department records, to wit: said Officer wrongly indicated, or caused to be indicated, on the roll call log that his end of tour as 1050 hours when, in fact, he left work at 1040 hours.

P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY – GENERAL,
GENERAL REGULATIONS

5. Said Police Officer Ronald Fields, assigned to the 25th Precinct, on or about and between June 12, 2006 and June 21, 2007, having changed said Officer's contact information, did fail and neglect to notify his Commanding Officer by submitting form Change of Name, Residence or Social Condition (PD 451-021) as required.

P.G. 203-18, Page 1, Paragraph 3 – RESIDENCE REQUIREMENTS,
GENERAL REGULATIONS

The Department was represented by Pamela Naples, Esq., Department Advocate's Office.

The Respondents were represented by Craig Hayes, Esq.

The Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 83163/07

Respondent Fawcett is found Guilty of Specifications 1, 2 and 3, and Not Guilty of Specifications 4 and 5.

Disciplinary Case No. 83164/07

Respondent Fields is found Guilty of Specifications 1, 2 and 3, and Not Guilty of Specifications 4 and 5.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Douglas MacLean, Police Officer John Feliciano, Sergeant Raymond Sanchez, and Lieutenant James Hynes as witnesses.

Sergeant Douglas MacLean

MacLean, a 15-year member of the Department, was the Assistant Integrity Control Officer (ICO) at the 25 Precinct. He testified that one of his duties in the command was to monitor court appearances. He stated that at approximately 1:00 p.m. on June 12, 2006, he received a telephone call from Assistant District Attorney (ADA) Weinberg, informing him that the Respondents had been scheduled to appear in court that day but failed to show up. Weinberg told MacLean that he notified the Respondents to appear the following day. MacLean, in turn, instructed Police Officer John Feliciano to call the Respondents at home. Feliciano later informed MacLean that he had left a message for Respondent Fawcett but Respondent Fields' telephone was disconnected. MacLean told Feliciano to put court notifications for the Respondents in the midnight roll call.

When MacLean arrived at work at 6:00 a.m. on June 13, 2006, he looked to see if the Respondents had been notified. He saw that Sergeant Raymond Sanchez, the patrol supervisor for the midnight tour, had signed and initialed by the Respondents' names on the notification recap sheet, indicating that the Respondents had in fact been notified.

At approximately 10:30 a.m., however, Weinberg called MacLean to tell him that the Respondents had again failed to appear in court. MacLean remembered at that point that the

Respondents were still in the station house receiving training in the muster room, so he asked Sergeant James Hynes, the desk officer at the time, to "tell them right now that they have to go to court and to leave."

MacLean testified that he spoke to Hynes later. Hynes told MacLean that when he instructed Respondent Fields to go to court, Respondent Fields responded that he was not going. Hynes said "well you have to go to court." Respondent Fields told Hynes that he did not think he had to go, noting that he was on extended overtime. Hynes then gave Respondent Fields the option of either going to court or going to MacLean's office. According to MacLean, neither of the Respondents ever came to his office.

At 10:40 a.m., MacLean went downstairs to the muster room, where he saw that the Respondents had signed out on the roll call for 10:50 a.m. (see Court Exhibit [CX] 1, 25 Precinct roll call for June 13, 2006). MacLean then went to the desk, where he observed Respondent Fields walking by approximately eight feet away. According to MacLean, he yelled out Respondent Fields' name, but Respondent Fields proceeded to walk out of the station house. It was 10:41 a.m. at the time. MacLean did not know if the Respondents were going to court when they left the station house that day.

On cross-examination, MacLean testified that it depends on the time of day whether or not a police officer would receive a court notification from roll call personnel. When roll call makes the notification, a computer-generated form is given to the officer while at roll call. MacLean explained that during daytime hours, he is usually informed of a court notification after it is printed off by roll call personnel. He further explained that when an officer needs to appear in court on a day off, the officer will receive a telephone notification at home.

Respondent's Exhibit (RX) A is copy of a computer-generated notification for Respondent Fields to appear before the Manhattan Grand Jury on June 14, 2006, his regularly scheduled day off, for a case in which [REDACTED] was the defendant. There are lines on the bottom of the notification form for the person making the notification to write in his name, tax identification number, and date and time that the notification was given. There is another line on the bottom, "MOS Signature," for the member receiving the notification. All of these lines were left blank on this notification form.

RX B is a copy of a similar notification form for Respondent Fawcett to appear before the Manhattan Grand Jury on the same date for the same case. On the bottom of this notification, the words "left message @ 1405 hrs" are written in, Feliciano stated, his hand. No name, tax number, or signature appears on the bottom of the notification.

MacLean testified that the Respondents have been assigned to the 25 Precinct for quite some time, and he has never before needed to address disciplinary problems with them, although he did not "monitor their activity." He stated that when Respondent Fields walked past him on June 13, 2006, Respondent Fields was walking down the stairwell, which was located 15 to 20 feet from the desk. The stairwell faces the desk. Someone exiting the building would walk four or five steps and then turn out of the building. MacLean did not recall a lot of people present in the area when he called out Respondent Fields' name. The exit door opens onto 119th Street.

On redirect examination, MacLean reiterated that when an officer is notified to appear in court on his regular day off, he will be notified over the telephone at home. But if a last-minute notification comes in for an officer who is scheduled to be at work that day, roll call personnel will leave the notification at the desk, and the officer will receive a stamped message to see the desk officer for the notification. MacLean stated that on June 12, 2006, he received computer-

generated notifications for the Respondents to appear in court the following day, and he gave those notifications to Feliciano. According to MacLean, if a notification form has not been endorsed by the officer who is the subject of the notification, it does not necessarily mean that that officer was not notified. He asserted that a verbal notification from a supervisor to appear in court is a valid notification.

Police Officer John Feliciano

Feliciano, a 22-year member of the Department, is currently assigned to the 25 Precinct roll call office, where he is responsible for making court notifications. He testified that officers can be notified in writing, verbally, or over the telephone. He stated that on June 12, 2006, MacLean instructed him to notify the Respondents of a court appearance over the telephone. Feliciano proceeded to call the Respondents, using the telephone numbers that were on file in the roll call office. He explained that he got the numbers from a log, which was generated from each officers' "10-card" (Form PD 406-143, Force Record, used to document members' personal information). Feliciano left a message for Respondent Fawcett, instructing him to appear in court. According to Feliciano, the number that he called for Respondent Fields was not working.

On cross-examination, Feliciano testified that on June 12, 2006, he worked from 8:00 a.m. until 4:00 p.m. He could not recall if he worked the following day. He stated that the preferred way to notify someone is in writing and to get the form signed by the recipient as proof that the notification was, in fact, made. He testified that after he made the telephone calls to the Respondents, he placed their notification forms in a "not notified" folder. To his knowledge, the notification forms were never presented to the Respondents.

On redirect examination, Feliciano testified that when he makes a verbal notification instead of a written notification, he later indicates on the notification form that the notification has been made.

Sergeant Raymond Sanchez

Sanchez, a 22-and-a-half-year member of the Department, was the patrol supervisor in the 25 Precinct on June 13, 2006, from 12:00 a.m. until 8:00 a.m. Sanchez stated that on that day, he notified the Respondents of court appearances. He testified that a notification can be given to an officer verbally or in writing. Sanchez documented the Respondents' notifications by dating and initialing the precinct's Notification Control Sheet (see Department's Exhibit [DX] 1). According to Sanchez, he had never initialed a Notification Control Sheet unless the notification had been successfully given.

On cross-examination, Sanchez testified that although he did not specifically recall giving the Respondents written notifications, he would have given them an index-card-sized notification sheet with two copies. One copy is kept by the recipient officer. The second is supposed to be signed by the recipient officer and returned to the desk.

Sanchez stated that he often worked with the Respondents over a period of five years, and he never had disciplinary problems with them.

On redirect examination, Sanchez testified that roll call would have provided him with the index-card-sized notification sheets. There have been times that a signed copy of the sheet has not been returned to him. He stated that if a copy is not returned to him, it does not mean that the notification was not made.

On recross-examination, Sanchez testified that his testimony about making notifications to the Respondents is based on his review of the Notification Control Sheet and his normal practice as a supervisor, not on an independent recollection of the incident.

Lieutenant James Hynes

Hynes, a ten-year member of the Department, is currently assigned to the 50 Precinct. From 6:55 a.m. until 3:52 p.m. on June 13, 2006, he was assigned as the desk sergeant in the 25 Precinct. He testified that at approximately 10:25 a.m. that day, he was asked by MacLean over the telephone to notify the Respondents for court. MacLean told Hynes that the Respondents were supposed to be in court that day, the Assistant District Attorney was waiting for them, and that Hynes should look for them in the muster room, where training was taking place.

Hynes testified that giving notifications in this manner was not common practice. He explained that the most common way for an officer to be notified for court is to be handed a paper notification by a supervisor during roll call at the start of tour. If the officer is not at work, a telephone notification can be made at the officer's home.

Hynes testified that when he saw Respondent Fields in the muster room, he told Respondent Fields that he had received a call from MacLean, who had said "the Assistant District Attorney is looking for you. You are supposed to be at court today." Respondent Fields replied, "I am not going." Hynes told him "you have to go" and walked away. Respondent Fields then said that he would call the ADA.

When Hynes walked out of the muster room, he saw Respondent Fawcett standing near the telephone switchboard operator's desk. Hynes told Respondent Fawcett the same thing he told Respondent Fields. Respondent Fawcett replied that he did not "feel like he had to go to

court because it was a short notice notification.” When Hynes told Respondent Fawcett “you still have to go to court,” he replied that he did not think he could because he had a physical therapy appointment. At that point, Hynes told him, “If you are having difficulties attending court today, go upstairs, speak to Sergeant MacLean, and take your partner with you, and see if you could contact the District Attorney and have the date rescheduled for your court appearance.” According to Hynes, Respondent Fawcett told him that he would go upstairs and speak to MacLean about it.

Hynes testified that when MacLean came down to the desk and asked if the Respondents had been notified, he told MacLean that he did notify them. Hynes added that he had given them the option of speaking to MacLean about changing the court date. As MacLean walked away from the desk, both MacLean and Hynes observed Respondent Fields walking out of the station house. According to Hynes, MacLean screamed Respondent Fields’ name very loudly in order to get his attention, and Respondent Fields just continued to walk out of the building. Hynes was standing six feet behind MacLean at the time and was able to hear MacLean scream for Respondent Fields. In addition to MacLean, Respondent Fields, and Hynes himself, the telephone switchboard operator was the only other member of the service that Hynes could recall being in the area at the time. Even though the Respondents had entered 10:50 a.m. as their sign-out time on the roll call, it was 10:45 a.m. when Hynes observed Respondent Fields exiting the station house. Hynes stated that even though the Respondents were not notified in the customary manner, they were given verbal orders by him to appear in court that day.

On cross-examination, Hynes testified that if a telephone notification is not successful, an officer will be notified in person at roll call the next time he reports for duty. He stated that when an officer is notified with an index-card-sized notification form, a copy of the form is

collected by the patrol supervisor who conducted roll call and placed in a drawer at the desk. These copies are eventually brought to the roll call office for storage. According to Hynes, he was giving an order when he told Respondent Fawcett to go upstairs and speak to MacLean if Respondent Fawcett had difficulties going to court.

On redirect examination, Hynes testified that he has received a copy of every written notification that he has handed out. He is aware of other supervisors who have not received notification copies. The fact that a notification sheet has not been returned, however, does not mean that the officer who received the notification was not successfully notified.

On recross-examination, Hynes testified that he considered it his responsibility to get back copies of written notifications that he issues.

The Respondents' Cases

The Respondents testified in their own behalf.

Respondent Police Officer Eric Fawcett

Respondent Fawcett, an 18-and-a-half-year member of the Department, is currently assigned to the 25 Precinct. He has been assigned to the 25 Precinct for his entire career and has made over 300 arrests during that period. He has been notified to appear in court approximately 100 times. He testified that he has received most of his court notifications in writing from a sergeant shortly after roll call, but there have been times that he was notified verbally. He considered these verbal notifications to be as valid as written ones.

On June 13, 2006, Respondent Fawcett worked his regularly scheduled tour from 11:15 p.m. until 7:50 a.m. That is, he began his tour on June 12 and worked into June 13. He testified that he received overtime after that for training.

Respondent Fawcett testified that at that tour's roll call, he was not given any sort of verbal or written court notification. At approximately 10:40 a.m. on June 13, 2006, he was standing at the side of the desk when Hynes told him "something to the effect that I should see Sgt. MacLean. He has a notification for me." According to Respondent Fawcett, Hynes did not give an exact time, date, or location for the court appearance, nor did he give a written notification to go to court that morning. Respondent Fawcett testified that he went to the locker room to change and then stopped by MacLean's office. MacLean was not there, so Respondent Fawcett went downstairs to sign out and then exited the station house. Approximately eight officers had participated in the overtime training and were all leaving work at the same time. Respondent Fawcett stated that when he woke up late in the day on June 14, 2006, he retrieved a telephone message from Feliciano about a court appearance.

On cross-examination, Respondent Fawcett testified that he received his notification for overtime training that day verbally at roll call from the patrol supervisor. He went to MacLean's office at some point between 10:40 and 10:50 a.m. He did not wait for MacLean, leave him a note, call him on the telephone, or ask anybody where he was. When he received the telephone message from Feliciano, he did not call him back because he was undergoing a [REDACTED] the next day and could not go to court.

Upon questioning by the Court, Respondent Fawcett testified that to the best of his recollection what Hynes told him that day was to go see MacLean because MacLean had a court notification.

Respondent Police Officer Ronald Fields

Respondent Fields, a 15-year member of the Department, is currently assigned to the 25 Precinct. He has been assigned to the 25 Precinct for his entire career and has made approximately 250 or 300 arrests during that period. He has been notified to appear before the grand jury on more than 75 occasions. He testified that he typically receives court notifications from the desk officer or patrol supervisor either prior to or immediately after roll call. The supervisor making the notification typically gives him a form and asks him to sign it.

Respondent Fawcett explained that [REDACTED] was a perpetrator that he had arrested. He had met with Weinberg, the ADA, about the case once prior to June 13, 2006.

On June 13, 2006, Respondent Fields worked the "midnight tour. 2315 to 0740." At roll call, he was notified that he would have to stay for overtime at the end of tour to receive training. He was not given any sort of verbal or written court notification at roll call.

After his regularly scheduled tour, Respondent Fields reported to the muster room for training. At one point, Hynes came and told him that he had to go to court and should see MacLean for further information. Respondent Fields had not received a court notification for that date prior to this conversation with Hynes, and he went upstairs to see MacLean. According to Respondent Fields, MacLean's office door was open, but MacLean was not inside. It was approximately 10:40 a.m. Respondent Fields then went to the locker room, changed, signed out, and went home. He testified that he did not hear MacLean call his name as he exited the station house. Respondent Fields stated that when Hynes told him about going to court, he did not think Hynes was talking about going to court that very morning. He explained that had he needed to go to court that morning, he would have expected to receive a written notification.

On cross-examination, Respondent Fields testified that verbal notifications are acceptable and have been done in the past, but he had never received one himself. He conceded that his notification for overtime training that day was a verbal notification. When Respondent Fields went to MacLean's office, he did not wait for MacLean, leave him a note, call him on the telephone, or ask anybody where he was.

Upon questioning by the Court, Respondent Fields testified that to the best of his recollection, all that Hynes told him that day was to see MacLean for a court notification. He stated that to the best of his knowledge the clock said 10:50 a.m. when he signed out. According to Respondent Fields, he made a change on his 10-card when he changed his telephone number at home.

CX 2 is a copy of Respondent Fields' 10-card, on which several telephone numbers are crossed out and different numbers are written in. Indicated next to one of the telephone numbers is that it was new as of March 6, 2006.

FINDINGS AND ANALYSIS

Overview

This case is about a breakdown in the notification process for court appearances. From the Department's perspective, the Respondents were notified to appear before a New York County Grand Jury panel, but failed to follow those commands. From the Respondents' perspective, the proper process was not followed by precinct staff, such that the Respondents were not properly informed of when they should appear. The best way to address these issues is chronologically, so the Specifications will be discussed out of numerical order.

Specification No. 5 (Fawcett)

The fifth specification for Respondent Fawcett charges him as follows: “on or about June 13, 2006, while on-duty, within the 25th Precinct, after having been notified by New York City Police Officer Feliciano to go to the Manhattan Criminal Court, did fail and neglect to comply with said notification.” MacLean, the Assistant ICO, testified that on June 12, 2006, after receiving a call from ADA Weinberg, he instructed Police Officer John Feliciano, of the roll call office, to notify the Respondents to appear on June 13, 2006. Feliciano testified that MacLean so informed him on June 12, and that on the same day, he called both Respondents. Respondent Fields’ number was not working, and Feliciano left a message for Respondent Fawcett.

Feliciano, however, gave no indication how it was that he remembered these events. Specifically, there was no evidence that Feliciano memorialized, in any way, that on June 12, 2006, he called the Respondents, leaving a message for Respondent Fawcett and encountering a non-working number for Respondent Fields. There was evidence, however, that Feliciano left Fawcett a message the *next* day. RX B is a computer print-out message from the Manhattan Appearance Control Unit to the Desk Officer of the 25 Precinct. It is dated June 13, 2006, at 1:49 p.m. It instructs that Respondent Fawcett was to be notified for an appearance at the New York County Grand Jury on June 14, 2006, at 9:00 a.m. Feliciano testified that he hand-wrote the line at the bottom indicating that he left a message with Respondent Fawcett at 2:05 p.m., telling him of the appearance.

In sum, it appears from the evidence that Feliciano made the calls about the notifications on the afternoon of June 13, 2006. The specification charges Respondent Fawcett with failing to comply with a notification while on duty on June 13, 2006. Because Respondent Fawcett’s tour

ended before he received the message from Feliciano, he cannot be found guilty of the specification. Therefore, the Court finds Respondent Fawcett Not Guilty.

Specification No. 5 (Fields)

The fifth specification against Respondent Fields charges him with failing to notify his Commanding Officer of a change in his contact information, as required by *Patrol Guide* § 203-18, by submitting form PD 451-021, Change of Name, Residence or Social Condition. The Department's proof of this was that when Feliciano called Respondent Fields on June 12, 2006, using the number listed on the roll call office's log, the number was non-working, that is to say, Feliciano did not reach Respondent Fields' home landline. The log was not produced for trial, and Feliciano did not state the actual number he called. Feliciano testified that the log was generated from officers' *10-cards*, a different form, known formally as the Force Record. The Force Record contains residence and phone number information in addition to pistols and revolvers owned by the member.

No PD 451-021 form (Change of Name, Residence or Social Condition) was produced or offered into evidence at trial. The back of Respondent's Force Record was received as a court exhibit (CX2). The phone numbers section contains several different numbers, with some crossed out. As for the non-crossed out numbers, there is one "home," i.e., landline number, one cell phone number, and one number listed as "new" as of March 6, 2006. Respondent Fields testified that he had changed his residential number in the past, and had made a change on his 10-card.

The fact that Feliciano called a non-working number does not prove that Respondent Fields did not update his PD 451-021 because Feliciano's list of numbers was not generated from

PD 451-021s. The list was generated from 10-cards. Thus, even if Respondent Fields had filed an updated PD 451-021, Feliciano still would have been calling the wrong number. As noted, Respondent Fields had made a recent change to his 10-card, three months before this incident. There was no testimony as to how or if the roll call office log was updated when members made changes to their 10-cards, as Respondent Fields did in March 2006. In any event, because the evidence submitted to the Department failed to show that Respondent Fields did not change his PD 451-021, he is found Not Guilty.

Specification No. 3 (Fawcett) & Specification No. 3 (Fields)

The Respondents both are charged with disobeying the order of Sergeant Raymond Sanchez, the patrol supervisor for the 12x8 tour of June 13, 2006 (actually beginning at 11:15 p.m. the previous day), to appear in court on June 13, 2006. Sanchez described his normal practice when notifying members: "They are given a notification and you sign the sheet saying you gave it to them." Sanchez asserted that he had never deviated from this practice, but added that "if anything" would cause him "to deviate from this practice," it would be "[i]f they weren't notified." Sanchez testified that on DX 1, the 25 Precinct Notification Control Sheet, he had initialed next to lines indicating that the Respondents had been notified on June 13, 2006, to appear at the District Attorney's Office on June 13, 2006. Sanchez stated that he had never placed his initials on the control sheet "when a police officer has not been notified." Sanchez made clear that he did not remember handing the index-card-sized notifications to the Respondents, but knew that he had done so, based on his normal practice. The cards were given to Sanchez by the roll call office.

On cross-examination, counsel for the Respondents pointed out that the Department should have copies of the index-card notifications. On redirect, Sanchez described what would happen with the cards: "If it is a busy night. If I have to run out and if I hand it to them and I say give it to me later and a lot of times they can return it to the desk officer." Sanchez reiterated that he would not sign the control sheet if he "were not aware whether or not the police officers were notified." Lieutenant James Hynes, who was working that day at the 25 Precinct as the desk officer, explained that at that command, the patrol supervisor (Sanchez) usually collected the index cards and, Hynes believed, placed them in a drawer at the desk. Hynes believed these cards eventually were supposed to go to the roll call office, but in his experience, they were always returned to the desk. Hynes added, however, that he always made sure to take back the second copy after handing the notification to the officer, and considered his responsibility to do so and see that "it went to its rightful place in the drawer and to rol[l] call." Hynes had heard from other supervisors though that "they have difficulties collecting those notifications."

While the Advocate did not specifically state that the index cards were missing, none were produced, and the foregoing context illustrates that they could not be produced.

The testimony of Sanchez and Hynes shows that the index cards were not necessarily maintained, even though they should have been. Thus, as the Advocate noted, the fact that the cards could not be produced for trial does not mean that the Respondents were not notified. The Court is persuaded by Sanchez's testimony that he would not have signed the control sheet signaling that the Respondents had been notified if he had not been certain of it. The Court is also persuaded by Hynes's testimony that when he spoke to Respondent Fawcett at around 10:30 a.m. on June 13, 2006, Respondent Fawcett mentioned that it was a "short notice" notification. This indicated to Hynes, as it does to this Court, that Sanchez's notifications were in fact given at

the previous roll call. The Court also notes that there was no evidence of bias against the Respondents, as Sanchez stated he had not previously had problems with them. Accordingly, the Court finds each Respondent Guilty of the second specification against each of them.

Specification No. 1 (Fawcett) & Specification No. 1 (Fields)

The Respondents are charged with violating a verbal order to each by then-desk sergeant Lieutenant James Hynes, given around 10:30 a.m. on June 13, 2006, that they were to go to the Manhattan courts. Hynes testified that he told both Respondents, separately, that he had gotten a call from MacLean and that both Respondents needed to go to court. The Respondents, however, both testified that Hynes told each simply to see MacLean about a court notification, but not that it was in a sense to go to court immediately.

The Court credits Hynes and finds each Respondent Guilty. Hynes specifically remembered that he told each Respondent that each needed to go to court "today." Hynes also recalled the specific responses of each officer: Respondent Fields told him, "I am not going," and Respondent Fawcett said that he had physical therapy. While the Respondents' attorney argued on summation that the 25 Precinct's supervisors "dropped the ball and needed to cover their tracks," thus implying, inter alia, that Hynes did not clearly inform the Respondents to go to court right there and then, there is no evidence that this would have been necessary. For example, it is important for officers to make timely Grand Jury appearances in order to ensure that arrested defendants on whom bail was set at arraignment are not subsequently released when no indictment is forthcoming. See Criminal Procedure Law § 180.80. No evidence was adduced at trial as to whether the defendant in question, [REDACTED] was released pursuant to CPL § 180.80,

whether bail was set to begin with, or whether his attorney had waived the statutory requirements.

Hynes's specific recollections were a much stronger form of evidence than the Respondents' vague, identical statements that Hynes only told them to see MacLean about some undefined notification. As such, the Court finds that Hynes did give them a verbal order, which they each refused, and accordingly finds each Guilty.

Specification No. 3 (Fawcett)

In the third specification, Respondent Fawcett is accused of disobeying Hynes' order to report to MacLean, with Respondent Fields, about the notification. Hynes testified that when Respondent Fawcett, the second of the two he spoke to, told him that he had physical therapy, Hynes told him "if you are having difficulties attending court today, go upstairs, speak to Sgt. MacLean, and take your partner with you, and see if you could contact the District Attorney and have the date rescheduled for your court appearance." When MacLean later asked Hynes if the Respondents had been notified, Hynes said that he told MacLean that he "also gave them the option of coming up and seeing you because P.O. Fawcett didn't think he was going to be able to attend court." Hynes testified that he viewed his statement to Respondent Fawcett as an order.

MacLean testified that the Respondents did not come to see him. Respondent Fawcett testified that he went to see MacLean – Respondent Fields testified that he went along – but MacLean was not there.

Even crediting the Respondents' version of events, the Court finds Respondent Fawcett Guilty of this specification. He admitted that he did not wait for MacLean to return to his office, leave him a note, ask anyone where he was, or "try to reach out to him in some other way than

going to his office.” Here, Hynes had told Respondent Fawcett to see MacLean, who was liaisoning with the ADA, if he needed to re-schedule the appearance. The Patrol Guide is just that, a guide. As its Foreword states (referencing the Department Manual as a whole), it “does not contain distinct instructions for every situation that may be encountered in the field.” It is impossible to anticipate every situation that will arise in the complex law-enforcement environment of New York City and in the lives of members of the service. The context of Hynes’ order was to speak to MacLean. Under the circumstances, it was not enough for Respondent Fawcett to just go upstairs, look in MacLean’s office, see that he was away from his desk, and go home. While the Court does not suggest that Respondent Fawcett had to perform an all-out search, he was required to do more than he did upon hearing that an ADA wanted him in court that morning. As such, Respondent Fawcett is found Guilty.

Specification No. 3 (Fields)

Respondent Fields is charged with discourtesy to a supervisor, MacLean, who testified that he yelled “Fields” to try to get his attention when he was walking out of the building, after Hynes had notified him of the court appearance. Hynes also testified to this exchange. MacLean said he was about eight feet away from Respondent Fields. In his testimony, Respondent Fields denied hearing this.

The sole question for the Court on this specification is credibility, and the Court credits MacLean and Hynes. Respondent Fields was an interested witness as a matter of law. See People v. Agosto, 73 N.Y.2d 963, 967 (1989) (defendant is interested witness as a matter of law); Coleman v. New York City Transit Auth., 37 N.Y.2d 137, 142 (1975) (an actor in the transaction, having motive to shield self from blame, is an interested witness, even if not a party).

As noted supra, there was no evidence that 25 Precinct supervising personnel would have found it necessary to fabricate events in order to shield themselves from blame. MacLean stated that he never had disciplinary problems in the past with the Respondents (Hynes was not asked about this). On the whole, the testimony of the Department's witnesses was more credible. Thus, the Court finds Respondent Fields Guilty.

Specification No. 4 (Fawcett) and Specification No. 4 (Fields)

In the fourth specification against each Respondent, they are charged with making false entries in Department records for writing on the roll call sheet that they left at 10:50 a.m., when they actually left at 10:40 a.m. MacLean testified that he inspected the sheet at 10:40 a.m., and saw that the Respondents were both signed out at 10:50 a.m. MacLean stated that he saw Respondent Fields leave the station house at 10:41 a.m. Hynes testified that he observed him leave four minutes later at 10:45 a.m.

Respondent Fields testified, "To the best of my knowledge," the clock said 10:50 a.m. when he signed out. Respondent Fawcett did not specifically testify about the time he signed out.

CX 1 is the roll call sheet. Both Respondents are signed out at 10:50 a.m., apparently in the same handwriting. An inscription at the upper right hand corner seems to read, "Sgt MacLean inspected @ 1045." MacLean did not testify that he memorialized his inspection of the sheet; it was not introduced into evidence until after he testified. Yet he apparently inspected it at 10:45 a.m., a five-minute discrepancy from his testimony. The Department cannot, therefore, prove that the Respondents left work at 10:40 a.m. but indicated or caused to be

indicated on Department records that they left at 10:50 a.m. Accordingly, the Respondents are found Not Guilty.

PENALTY

The Respondents have been found Guilty of ignoring court notifications given to them directly by two separate supervisors. The first incident was at the beginning of their June 13, 2006, midnight tours, when, at roll call, they were given notification slips by Sanchez stating that they were needed at the Grand Jury later that morning. The second incident was when they were told verbally and face-to-face by Hynes that the ADA had called, saying that the Respondents had not shown up (they also had extended-tour overtime training at the same time they would have been expected at the Grand Jury). Respondent Fields has additionally been found Guilty of discourtesy for ignoring the attempt of a third supervisor, MacLean, to get his attention and ensure his court attendance. Respondent Fawcett has additionally been found Guilty of violating Hynes's order to discuss the matter with MacLean if he was having difficulty attending court.

The Department recommended a penalty of suspension for 30 days and placement on dismissal probation for one year. The Respondents were not previously suspended, even though they could have been immediately suspended as a result of violating a lawful order. The Department's argument seems to be that eventually that suspension must come. In fact, not all refusal-of-orders cases result in suspension. See, e.g., Matter of Clifford v. Kelly, 58 A.D.3d 432 (1st Dept. 2009) (ten vacation days for member who disobeyed order to change into uniform and instead went into muster room to find her assignment for the tour).

Nevertheless, the Respondents' disobedience is a serious matter and merits a strong penalty. "The Department is a paramilitary organization, and as such, depends for its

effectiveness on prompt obedience to lawful orders under a hierarchical command structure.

Indeed, the commands often have life or death consequences for officers and civilians.”

Clifford, 58 A.D.3d at 434 (nternal citation omitted). Here, the Respondents did not know what the consequences of not going to court may have been; as noted supra, a defendant may be released on recognizance if there has not been Grand Jury action within a certain period of time. For all they knew, [REDACTED]’s case could have been dismissed outright if they did not appear. Their refusal to appear was made even more egregious by the fact that Hynes gave them a direct, face-to-face order, and they simply declined to follow it. Their “insubordinate and disingenuous demeanor . . . is unacceptable within our para-military organization.” See Disciplinary Case No. 81635/06, Police Commissioner’s memorandum.

Accordingly, the Court recommends that each Respondent be DISMISSED from the New York City Police Department, but that their dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code of the City of New York, during which time they are to remain on the force at the Police Commissioner’s discretion and may be terminated at any time without further proceedings. The Court further recommends that each Respondent forfeit 30 vacation days. See Disciplinary Case No. 81635/06 (30 vacation days and dismissal probation for officer who was discourteous to lieutenant instructing him on how to perform telephone switchboard duties, and who disobeyed sergeant’s order that he should be the RMP recorder rather than operator).

APPROVED
SEP 17 2009
RAMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ERIC FAWCETT
TAX REGISTRY NO. 897432
DISCIPLINARY CASE NO. 83163/07

In 2008, Respondent Fawcett received an overall rating of 4.5 “Extremely Competent/Highly Competent” on his annual performance evaluation. He received a rating of 3.5 “Highly Competent/Competent” in 2006 and 4.0 “Highly Competent” in 2005. He has received 11 medals for Excellent Police Duty and one for Meritorious Police Duty. [REDACTED]

[REDACTED]
Respondent Fawcett has no prior formal disciplinary record. |

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RONALD FIELDS
TAX REGISTRY NO. 906227
DISCIPLINARY CASE NO. 83164/07

In 2007 and 2009, Respondent Fields received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He received a rating of 3.5 “Highly Competent/Competent” in 2006. He has received five medals for Excellent Police Duty. [REDACTED]

[REDACTED] Respondent Fields has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials